

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 08-69513

KAREN FORD,

Chapter 13

Debtor.

Judge Thomas J. Tucker

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**ORDER DISMISSING CASE**

On December 2, 2008, Debtor filed a voluntary petition for relief under Chapter 13, initiating this case, and also filed "Exhibit D" (Individual Debtor's Statement of Compliance With Credit Counseling Requirement)(Docket # 3). Debtor checked Box 3 on Exhibit D, which provides:

I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now.  
*[Summarize exigent circumstance here.]*

Debtor stated the following as her exigent circumstances: "Debtor had emergency in family and with personal health and unable to obtain counseling but will within 5 days." Debtor did not file a motion for approval of her certification of exigent circumstances.

On December 3, 2009, the Clerk of the Court issued a "Notice of Deficient Filing" based on Debtor's failure to file a "Motion for Approval of Certificate of Exigent Circumstances." (Docket # 5.) The deficiency notice provided, in relevant part: "A corrected/missing document is required within (8) days of this notice. If not corrected, the case may be dismissed or an order striking the document from the record may be entered by the Court." Debtor has never filed the missing motion.

On December 11, 2008, Debtor filed a “Certificate of Counseling” (Docket # 13), which states that on December 11, 2008, Debtor received “an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§ 109(h) and 111.”

For the following reasons, the Court must dismiss this case.

11 U.S.C. § 109(h)(1) requires, with limited exceptions, that a debtor obtain a credit counseling briefing before filing a bankruptcy petition. That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, **during the 180-day period preceding the date of filing the petition by such individual**, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(Emphasis added). 11 U.S.C. § 109(h)(3) provides a limited exception to § 109(h)(1)’s requirement of obtaining a credit counseling briefing **before** filing the bankruptcy petition. This exception permits a debtor to obtain the required credit counseling briefing up to 30 days after filing the petition, and for cause shown, up to 45 days after filing the petition. Section 109(h)(3)(A) provides:

**(3) (A)** Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that--

**(i)** describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

**(ii)** states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period

beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

E. D. Mich. L.B.R. 1007-6(a) provides the procedure that a debtor must use when filing a certificate of exigent circumstances under § 109(h)(3)(A):

**(a) Certification Procedures.** A debtor who files a certification under 11 U.S.C. § 109(h)(3)(A) shall also file a motion for approval of the certification. The debtor shall file the certification and the motion with the petition, serve it on all parties, and file a certificate of service. The deadline to file a response shall be 10 days after service. If no timely response is filed, the certification shall be deemed satisfactory under § 109(h)(3)(A)(iii) without a hearing or further order. The motion shall be accompanied by a notice that the deadline to file a response is 10 days after service and that if no response is filed, the court will deem the certification satisfactory under § 109(h)(3)(A)(iii) without a hearing.

In this case, Debtor never filed a motion to approve her certification of exigent circumstances, as required by L.B.R. 1007-6(a). Because that motion must be filed with the petition, or alternatively, within 8 days of being served with the deficiency notice, it is now too late to file such a motion.

Because the exception under 11 U.S.C. § 109(h)(3) does not apply, Debtor must meet the requirement of 11 U.S.C. § 109(h)(1), that she obtain credit counseling *before* filing her bankruptcy petition, to be eligible to be a debtor in this case. Debtor did not meet this requirement. She only received credit counseling *after* her petition was filed.

For these reasons, Debtor is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case must be dismissed.

Accordingly,

IT IS ORDERED that this bankruptcy case is DISMISSED.

**Signed on April 01, 2009**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**